

### Remarks

Reconsideration and withdrawal of the final Office Action are respectfully requested. Claims 1-24, 26-47, 49-67, 69 & 70 remain pending.

Initially, Applicant notes that the final Office Action fails to state a *prima facie* case of anticipation and/or obviousness with respect to many of Applicant's pending claims. For this reason, withdrawal of the final Office Action and reconsideration of the claims is requested. By way of example, the rejection to independent claims 15, 28, 41 & 61; and the rejection to dependent claims 14, 26, 40, 49, 60 & 69 are separately discussed below.

#### Claims 15, 28, 41 & 61:

At page 7 of the final Office Action, it is asserted that Matheny et al. (U.S. Patent No. 6,259,446 B1; hereinafter "Matheny") anticipate the subject matter of these claims. Without acquiescing to this characterization, Applicant notes that at page 8, the Office Action expressly admits that Matheny do not explicitly disclose "a central location", and that Ciccone, Jr. et al, (U.S. Patent No. 6,338,149; hereinafter "Ciccone") is cited for a teaching of this characterization. Thus, based on the rejection to claims 15, 28, 41 & 61 fails to state a *prima facie* case of anticipation based on Matheny, as admitted in the Office Action itself. In view of this confusion, and for at least this reason, Applicant respectfully requests reconsideration and withdrawal of the final Office Action.

The initial burden to establish a *prima facie* rejection of claims rests with the Examiner, and it is respectfully submitted that the present rejection is too confusing to be properly addressed.

#### Claims 14, 26, 40, 49, 60 & 69:

These claims are dependent claims which further characterize the plurality of inquiries as comprising multiple inquiry types, and wherein the multiple inquiry types include at least two of:

*a file inquiry which checks for existence of a file of a certain date, time or size and which can return file information;*

*an INI file inquiry which checks for a certain application, variable and value, and which can return a certain value or one or more variables and values;*

*an ASCII file inquiry which checks for a certain character string in a file, and which can return information on a line within the character string;*

*a registry inquiry which checks for a certain registry tree or value, and which can return one or more values in a tree or sub-tree;*

*an external process inquiry using an INI output, which comprises executing an external process and performing an INI file inquiry on the result;*

*an external process inquiry which executes an external process, provides an ASCII output, and performs an ASCII file inquiry on the result;*

*an external process inquiry using a registry, which executes an external process and performs a registry inquiry on the result; and*

*multiple inquiries which comprise a combination of multiple other inquiry types, where all must succeed.*

In rejecting the subject matter, the Office Action fails to state a *prima facie* case of obviousness and/or anticipation since the Office Action merely asserts that “Matheny et al. teach a file inquiry which checks for existence of a file of a certain date, time or size which can return file information . . . - Abstract; Col. 1, lines 30-45; Col. 6, lines 17-32.” Without acquiescing to this characterization of the teachings of Matheny, Applicant notes that the assertion is insufficient on its face to establish a *prima facie* case of rejection of the subject matter at issue. In Applicant’s claims 14, 26, 40, 49, 60 & 69, it is stated that the multiple inquiry types include at least two of the above-noted specific inquiry types. Since the Office Action only provides an alleged example of one of the inquiry types, it is clear that a *prima facie* case of obviousness/anticipation is not stated in the Office Action. As such, reconsideration and withdrawal of the final Office Action is respectfully requested.

For at least the above reasons, Applicant respectfully requests withdrawal of the finality of the outstanding Office Action, and reconsideration of the above-noted claims.

In the final Office Action, claims 1-7, 9-20, 22-24, 26-36, 38-46, 49-57, 59-66 & 69-70 were rejected under 35 U.S.C. §103(a) as being unpatentable over Matheny, and further in view of Ciccone, while claims 8, 21, 37, 47, 58 & 67 were rejected under 35 U.S.C. §103(a) as being unpatentable over Matheny and Ciccone, and further in view of Datig (U.S. Patent No. 6,233,545; hereinafter “Datig”), and claims 15-20, 22-24, 26-28, 41-46, 49, 50, 61-66, 69 & 70 were rejected under 35 U.S.C. §102(e) as being anticipated by Matheny. Each of these rejections is respectfully, but most strenuously, traversed and reconsideration thereof is requested.

35 U.S.C. §103(a):

Independent claims 1, 28, 30 & 51 stand rejected as obvious over Matheny in view of Ciccone. Applicant requests reconsideration and withdrawal of this rejection on the following grounds: (1) the independent claims at issue clearly distinguish over the applied art; (2) the Office Action has misinterpreted the teachings of the Matheny patent and Ciccone patent, thus voiding the basis for the rejection; and (3) the applied patents themselves lack any teaching, suggestion or incentive for their further modification as necessary to achieve Applicant’s recited invention.

An “obviousness” determination requires an evaluation of whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art. In evaluating claimed subject matter as a whole, the Federal Circuit has expressly mandated that functional claim language be considered in evaluating a claim relative to the prior art. Applicant respectfully submits that the application of these standards to the independent claims presented leads to the conclusion that the recited subject matter would not have been obvious to one of ordinary skill in the art based on the applied patents.

By way of example, Applicant recites a technique for gathering information on a state of a network of computer systems (e.g., claim 1). This technique includes providing at a central location a dictionary file data structure *having a plurality of unique inquiries for ascertaining state information on at least one computer system of the network of computer systems*. This plurality of unique inquiries is organized into at least one subject group. Each subject group is directed to a different piece of the state information. At least one group of the subject groups has multiple unique records of inquiry. The technique further includes processing the at least one

subject group of the dictionary file data structure to accumulate the state information. *This processing includes for each group of the at least one group having multiple unique records of inquiry, processing a record of the multiple unique records of inquiry, and if a condition of that record is satisfied, then terminating processing of the group. Otherwise, processing a next record of the multiple unique records of inquiry and continuing until a condition of one record of the multiple records of inquiry is satisfied or all records of the multiple records of inquiry of the group have been processed.*

Initially, Applicant respectfully submits that a careful reading of Matheny and Ciccone fails to uncover any discussion or implication of a technique for gathering information on the state of a network of computer systems. Further, a careful reading of these patents fails to uncover any teaching or suggestion of providing a dictionary file data structure having a plurality of unique inquiries for ascertaining state information on one or more computer systems of the network, let alone the provision of such a data file structure at a central location within the network. For at least these reasons, reconsideration and withdrawal of the obviousness rejection to the independent claims at issue based upon Matheny and Ciccone is respectfully requested.

Further, Applicant respectfully submits that the particular dictionary file data structure recited in the independent claims at issue is not taught or suggested by Matheny and Ciccone. For example, in Applicant's recited invention, the dictionary data file structure:

- (1) Has a plurality of unique inquiries for ascertaining state information on at least one computer system of the network of computer systems;
- (2) The plurality of unique inquiries are organized into at least one subject group, each subject group is directed to a different piece of the state information; and
- (3) At least one group of the one or more subject groups has multiple unique records of inquiry.

Applicant respectfully submits that Matheny and Ciccone do not teach or suggest such a dictionary file data structure provided at a central location of the computing network for use in facilitating gathering information of the state of the network of the computer systems. In the final Office Action's Response to Arguments at pages 11 & 12, no discussion is provided as to how Matheny and Ciccone teach the particular organization of inquiries as recited by Applicant in the independent claims at issue.

Additionally, Applicant respectfully submits that the Office Action misinterprets the teachings of Matheny as applied to the claims at issue. For example, Applicant recites a dictionary file data structure having a certain form. This form is such that there are a plurality of unique inquiries for ascertaining state information. These inquiries are organized into at least one subject group, with each subject group being directed to a different piece of state information. At least one of the subject groups has multiple unique records of inquiry. A careful reading of Matheny fails to uncover any teaching or suggestion of such a data structure. Specifically, column 1, line 30 – column 2, line 6, as well as column 35, line 64 – column 36, line 3, and FIG. 12, elements 1200-1290, fail to teach or suggest such a dictionary file data structure.

Novelty of the present invention is believed to reside, in part, in the provision of a dictionary file data structure having a plurality of inquiries arranged as set forth in the independent claims. Clearly, no data structure of inquiries is discussed in Matheny *per se*. The cited lines of Matheny are merely a summary of the invention described therein, wherein an automated menu state processing approach is presented. No arrangement of inquiries in a common dictionary file data structure is set forth. Further, figure 12 of Matheny, and the elements therein, are an example of menu state processing in accordance with Matheny. No express or implicit organization of inquiries into a data structure as recited by Applicant in the independent claims at issue is set forth. For example, in Applicant's independent claims, one group of the at least one subject group has multiple unique records of inquiry. The only record of inquiry in figure 12 of Matheny appears to be element 1240, where a determination is made whether the menu system querying of the command for the enable state is yes or no. Thus, there are not even multiple unique records of inquiry in Matheny, let alone a dictionary file data structure as recited by Applicant in the independent claims at issue.

Still further, Applicant's independent claims recite processing a record of the multiple unique records of inquiry of the at least one group, and if a condition of the record is satisfied, then terminating processing of the group. Otherwise, processing a next record of the multiple unique records of inquiry, and continuing such processing until a condition of one record of the multiple records of inquiry is satisfied or all records of the multiple records of inquiry of the group have been processed. No similar teaching or suggestion is apparent from Matheny either alone or in combination with Ciccone. Again, the Office Action merely references certain columns of Matheny, as well as FIG. 12, but provides no explanation as to how the Matheny processing could be interpreted as analogous to Applicant's recited processing. Applicant respectfully submits that this is because they are not.

In this regard, the Response to Arguments at pages 11 & 12 of the final Office Action appear to address a portion of the functionality at issue by stating that "regarding Applicant's argument that if a condition of the record is satisfied then terminating processing of the group, Matheny et al. teach if a condition is right then terminate a process – Col. 31, lines 29-32. Ciccone, Jr. et al. further teach checking of system objects – Col. 3, lines 49-67; Col. 11, line 49 to Col. 12, line 65." The applicability of the cited material from Matheny and Ciccone is respectfully traversed.

In Applicant's recited process, there is a dictionary data structure having a plurality of unique inquiries which are arranged in one or more subject groups, with one of the subject groups having multiple unique records of inquiry. It is this subject group having the multiple unique records of inquiry that are the subject of the processing at issue. In Applicant's invention, processing of the multiple unique records of inquiry within the one subject group includes processing a record of the multiple unique records of inquiry, and if a condition of that record is satisfied, then terminating processing of the group. It is respectfully submitted that Matheny and Ciccone do not teach a plurality of unique inquiries arranged in subject groups, with one of the groups having multiple unique records of inquiry, let alone the processing of those multiple unique records of inquiry as recited by Applicant in the independent claims at issue. Applicant's invention does not simply recite terminating a process if a condition is met. Rather, the termination occurs within the framework of the recited dictionary file data structure and multiple unique records of inquiry within one of the subject matter groups.

Matheny and Ciccone do not individually or collectively teach or suggest processing multiple unique records of inquiry as recited by Applicant, wherein if one condition of one record is satisfied, then terminating processing of the group, otherwise, processing a next record until a condition of one record of the multiple records of inquiry is satisfied or all records of the multiple records of inquiry of the group have been processed. For this additional reason, Applicant requests reconsideration and withdrawal of the obviousness rejection to the independent claims at issue.

For at least the above reasons, independent claims 1, 28, 30 & 51 are believed to patentably distinguish over the art of record. Each of these independent claims specifies that the dictionary file data structure is provided at a central location, and includes a plurality of unique inquiries for ascertaining state information on one or more computer systems of a network of computer systems.

Further, Applicant respectfully traverses the obviousness rejection to these claims based upon Matheny and Ciccone as set forth in the Office Action. It is believed that the Office Action misinterprets the teachings of Matheny to the extent deemed applicable to the unique dictionary file data structure recited in Applicant's independent claims, as well as the unique processing approach employing that data structure. Clearly, no dictionary file data structure is expressly discussed in Matheny. Further, the Office Action fails to set forth any explanation as to how such a dictionary file data structure as recited by Applicant would be inherent in the processing of Matheny. It is respectfully submitted that it is the Examiner's burden to initially establish inherency, that is, if that is the basis for a rejection. Further, it is believed that a careful reading of Matheny and Ciccone, as well as the other art of record, fails to provide any teaching, suggestion or incentive for their further modification as necessary to achieve Applicant's recited invention. For all these reasons, reconsideration and withdrawal of the obviousness rejection to the independent claims at issue is respectfully requested.

The dependent claims at issue in the obviousness rejections are believed allowable for the same reasons as the respective independent claims, as well as for their own additional characterizations. In this regard, Applicant notes that Datig is cited for teaching a rules data base in an ASCII file. Without acquiescing to this characterization of Datig, Applicant notes that a careful reading thereof fails to uncover any teaching or suggestion of the above-noted

deficiencies of Matheny and Ciccone when applied against the independent claims at issue. Thus, claims 1-7, 9-20, 22-24, 26-36, 38-46, 49-57, 59-66 & 69-70 are believed patentable over the applied art. Reconsideration and withdrawal of the rejection based thereon is respectfully requested.

35 U.S.C. §102(e):

The remaining claims (i.e., claims 15-20, 22-24, 26, 27, 41-46, 49, 50, 61-66 & 69-70) appear to stand rejected as being anticipated by Matheny. Reconsideration and withdrawal of this rejection is also respectfully requested in view of the claims submitted herewith.

It is well settled that there is no anticipation of a claim unless a single prior art reference discloses: (1) all the same elements of the claimed invention; (2) found in the same situation as the claimed invention; (3) united in the same way as the claimed invention; and (4) in order to perform the identical function as the claimed invention. In this instance, Matheny fails to disclose various aspects of Applicant's invention as recited in amended independent claims 15, 29, 41 & 61, and as a result, does not anticipate (or even render obvious) Applicant's invention.

As noted initially, the final Office Action expressly admits at page 8 that Matheny do not explicitly disclose "a central location" for a dictionary data structure within a network of computer systems. As such, Matheny cannot legally anticipate the claims at issue. Based on this, it is respectfully submitted that a *prima facie* case of anticipation is not stated in the final Office Action, and therefore, reconsideration and withdrawal of the final Office Action is requested.

Further, Applicant recites in these independent claims a method for gathering information on a state of a network of computer systems. This method includes providing at a central location a dictionary file data structure which has a plurality of unique inquiries for ascertaining state information on one or more computer systems of the network. At least one inquiry of the plurality of unique inquiries within the dictionary file data structure includes an instruction which has a result which is automatically output when a condition of the instruction is satisfied. Each result is predefined in the dictionary file data structure itself. The plurality of unique inquiries include at least one of a file check query, a file content check inquiry, an external process check inquiry, or a default inquiry. The technique further includes processing at least

one inquiry of the plurality of inquiries of the dictionary file to accumulate the state information. This processing includes for each instruction process, outputting the result of the instruction from the dictionary file data structure when the condition of the instruction is satisfied. Advantageously, the state information on the at least one computer system includes the outputted results from the dictionary file data structure from satisfaction of the at least one condition. Thus, in Applicant's approach, a centrally located dictionary file data structure is employed where a result from satisfying a condition of an instruction within an inquiry is automatically outputted. Thus, the outputted information structure and data is defined within the dictionary file data structure itself, and does not originate with the one or more computer systems for which the state information is being obtained. This advantageously allows for centralized updating of the inquiries and defined results from conditions within the inquiries being met. No similar dictionary file data structure, or processing approach, is believed taught or suggested by Matheny.

For example, as admitted in the final Office Action, there is no discussion in Matheny of providing at a central location of a network a dictionary file data structure *per se*, let alone providing such a dictionary file data structure which has a plurality of unique inquiries for ascertaining state information on one or more computer systems of the network as recited by Applicant. Still further, Applicant respectfully submits that a careful reading of Matheny fails to uncover any discussion of a dictionary file data structure wherein at least one inquiry of the plurality of unique inquiries within the data structure includes an instruction with a result that is automatically output when a condition of the instruction is satisfied. That is, there is no teaching or suggestion in Matheny of predefining results in a dictionary file data structure wherein the results are automatically output if the corresponding condition of the instruction within the inquiry is satisfied.

In this regard, Applicant notes that the Office Action recites Applicant's original claim language at issue, and then identifies various columns and figures in Matheny that are believed relevant. However, no explanation is provided, and a careful reading of the cited material fails to uncover any teaching or suggestion of relevancy to the claimed invention. Thus, the Office Action is believed to misinterpret the teachings of Matheny, thus voiding the basis of the rejection of the independent claims at issue. A careful reading of Matheny fails to uncover any teaching or suggestion of a dictionary file data structure wherein there are a plurality of unique

inquiries for ascertaining state information on one or more computer systems of a network. Further, a careful reading of Matheny fails to uncover any teaching or suggestion that at least one of these unique inquiries within the dictionary file data structure includes an instruction that has a result that is automatically output when a condition of the instruction is satisfied.

Still further, a careful reading of Matheny fails to uncover any teaching or suggestion of such a result being predefined in the dictionary file data structure. In accordance with Applicant's invention, the centrally defined dictionary file data structure allows for an ability to readily change inquiries, as well as results, without making changes throughout one or more computer systems of the network. No similar approach for gathering information on the state of a network of computer systems is believed taught or suggested by Matheny, or the other art of record.

Thus, reconsideration and withdrawal of the anticipation rejection to the independent claims at issue is respectfully requested. The respective dependent claims are believed allowable for the same reasons set forth above with respect to the independent claims.

All claims are believed to be in condition for allowance and such action is respectfully requested.

Respectfully submitted,

  
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